

STATEMENT OF NANCY E. McFADDEN  
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concerning  
FAIR TREATMENT OF AIRLINE PASSENGERS  
before the  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION  
SUBCOMMITTEE ON AVIATION  
UNITED STATES SENATE  
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Mr. Chairman and Members of the Committee:

I welcome the opportunity to appear before the committee today to address mounting concerns of airline passengers over their treatment by air carriers, and to discuss the Administration's proposal.

Committee Chairman McCain and Ranking Member Hollings deserve congratulations for calling these hearings and being one of the first to shine a light on the increasing problems facing airline travelers. The hearings will allow us to evaluate the problems clearly and determine what solutions the government can offer. We recognize the pro-active and aggressive role taken by the Chairman, Senator Wyden, Senator Snowe, and Senator Bryan, along with committee staff, in introducing the "Passenger Fairness Act." Secretary Slater has said he looks forward to working with you on a solid bill. Together, we can address these concerns, along with many other critical aviation issues contained in the committee-reported S. 82, the "Air Transportation Improvement Act."

We at the Department are committed to taking the steps that can help. I am sure you are aware that Vice President Gore announced the Administration's Airline Passenger Fair Treatment Initiative yesterday, and Secretary Slater has transmitted to Congress our "Airline Passenger Fair Treatment Act" proposal for your consideration. It contains real advances for consumers that I will outline today.

You have identified many problems faced by airline passengers that need to be addressed. Before talking about what has gone wrong in the airline industry, we must recognize all that has gone right. First, it has now been more than a year since the last fatal U.S. commercial airline accident. This is an unprecedented achievement, and a reflection of aggressive action taken by the airlines and DOT to improve airline safety. This enviable safety record was set while the number of U.S. passenger enplanements continues to mount, with the annual level now well over 600,000,000. Clearly, the number of people traveling by air is in part a reflection of the low fares that are still being made available to leisure travelers in many markets across our nation. As we address the airline consumer

protection and service issues raised today, we must all remain aware of these important attributes of industry performance, which consumers demand and have come to expect, and take care to not disrupt them.

Let me stress from the outset our belief that true competition is the best protection consumers can be offered. The Department has worked hard to ensure that competition, the lifeblood of airline deregulation, remains strong. That is why we proposed new competition policy guidelines last spring, and why we are working hard now to bring that process to completion, based on the thousands of comments we have received. It is our hope to issue our guidelines in the next few months. In that regard, we are working with the Transportation Research Board to ensure it has the resources it needs to complete its report to congress on the state of airline competition. Their report will be important to you, to us at the department, and to all air travelers.

We are also conducting a study of airport practices to determine exactly how airport practices can affect competition at the nation's largest airports. Our results will be released later this year as well as recommendations which may follow.

As you know, we recently sent to Congress several proposals to help promote competition as part of the bill reauthorizing funding of the FAA. Within our bill were concepts such as eliminating the slot rules in Chicago and New York to promote more service, mandating interline agreements between dominant carriers and small carriers at dominated hubs, requiring that carriers continue to support their small feeder lines in isolated regions during strikes, and requiring that the largest airports which are dominated by a single carrier prepare a competition plan before they can receive extra airport funds.

We also continue to publish our quarterly report on city air fares to highlight the ranges in air fares from city to city and market to market. Finally, we are continuing to work on the very large task of reviewing our computer reservations systems rules including topics such as: travel agent access to other CRS systems from hardware provided by their CRS vendors, productivity pricing, booking fees, screen padding, display bias, access to corporate discounts, travel agent contracts and internet practices.

We appeared before this Committee last year to lay out the benefits of our new competition guidelines, and we are now fulfilling the procedures that Congress enacted last October to assure that full consideration will be given in advance of final action on the guidelines.

I thought it might be helpful to outline for you what we have seen regarding the number and types of complaints file, and how we currently handle them. Since the mid-1990's, the number of complaints has started rise, particularly in the

area of flight problems--delayed and canceled flights, for example--and in customer service. In the past two years, the category of "customer service" complaints to DOT has increased 68%. The largest sub-categories of customer service complaints were "poor attitude"; information problems; seat assignment problems; and refusal to provide assistance. The number of complaints regarding "flight problems" increased 40% during the past two years. The largest sub-categories of flight problem complaints were cancelled and delayed flights; flight irregularities; and missed connections.

Last year we received approximately 9,600 complaints, and we know that the number of complaints received by us is only a fraction of the total number of complaints generated by airline passengers. Based on information available to DOT, major U.S. air carriers receive between 100 and 400 complaints for every complaint filed against them with the Department and, of course, these numbers are highly dependent on the counting methodology used.

We have a staff of 16 lawyers, industry analysts, and support staff, who both conduct the investigations and pursue enforcement, with follow-up on the most serious issues and patterns and practices of violations of our requirements. They meet regularly with major carriers to address the most important issues, publish and make available on the internet monthly statistics on consumer complaints, on-time performance, denied boardings and baggage claims, and publish and make available over the internet various brochures and fact sheets with helpful airline consumer advice. As your staff is aware, our Aviation Consumer Protection Division routinely provides valuable assistance to members of Congress when constituents experience these problems. In recent years, they have been given new tasks, including enforcing the rights of the disabled to non-discriminatory service and to carry out the airline "joint venture agreements" Congress enacted just last fall.

The consumer protection areas that have received the greatest attention in the past have been deceptive fare advertising, bait and switch advertising, deceptive code-share disclosure, deceptive on-time performance advertising, unlawful public charter programs, unauthorized sales of tickets to unsafe countries, inadequate signage and required consumer information availability at airports, failure to comply with the denied boarding compensation requirements on oversold flights, other deceptive airline practices, disability requirement violations, and alleged violations of other civil rights requirements in connection with airline compliance with FAA's security screening rules.

We believe that more can and should be done by government and, more importantly, by the airlines. The pending proposals in the House and the Senate, including S. 383, contain valuable components that deserve to be enacted.

The Administration has developed its own Airline Passenger Fair Treatment

Initiative--an aggressive plan combining legislation, regulation, and enforcement resources to aid the airline traveler.

The elements of the initiative are four:

Fair treatment for airline passengers.

Full disclosure of essential information.

Real compensation for unfair treatment.

Implementing the initiative.

We base our proposals on two very beneficial models used by DOT in the past to solve other difficult problems faced by airline passengers. One is the "family assistance plan" approach used by Congress in 1996 and 1997 to address inadequate industry-wide arrangements for dealing with the aftermath of major airliner crashes. The second is the systematic reporting of "on time performance" by the major carriers.

The recent example of Swissair and Delta Air Lines performance following the tragedy off Nova Scotia last year exemplifies how the statutory requirement for filing a comprehensive family assistance plan and adequately training staff to fulfill it can make all the difference.

Our second model is the great turnabout in carrier performance that followed the filing of monthly comparative data on carrier on-time performance. Prior to the filings, there tended to be great exaggeration about end-to-end flight times and the times of departure, for obvious competitive reasons, but the requirement to publicize the results--in many cases very poor results--operated very effectively to end the exaggerations that so badly misled consumers.

Both of these initiatives have had a very salutary effect on performance. There is industry-wide accountability and important information is provided to the consumer. This we consider to be the key to success.

Our bill would require each U.S. scheduled air carrier that operates large aircraft or code-shares with such an air carrier to submit a consumer protection plan to the Department of Transportation as a condition of maintaining its certificate to operate. The plan must contain a detailed summary of the customer services and related information a passenger should receive from the airline in the event of an irregularity, and the procedures the airline has in place to handle various kinds of consumer problems. For certain elements, our proposal sets forth specific requirements air carriers must meet in developing a comprehensive customer service plan. In other instances, the proposal permits the airline to

determine the level of service it will provide its customers.

Once the plan is submitted to the Department, we will hold the airline responsible for complying with each of the elements of its plan. Failure to comply with the plan would constitute a violation of the statute subject to civil penalties.

I would like to explain how the requirements of our proposal meet the problems being reported to us.

Delays, cancellations, and diversions: One of the most annoying problems faced by passengers is boarding an aircraft and then being trapped aboard it on the ground for extended periods. The same can happen after touchdown at the end of a flight, such as occurred for up to 8 hours in Detroit at the beginning of this year. Equally annoying is being told repeatedly at the departure gate that embarkation is delayed 20 minutes, when in fact the delay will in fact be more than an hour, and a passenger might have the option of shifting to a competitor's flight if not misled. Cancellations at the last moment and diversions in flight, without providing the real reason for them, are also objectionable.

In our bill, the "first line of defense" against this and other objectionable practices is to mandate detailed monthly reporting of written complaints each carrier receives. These data will be compiled and published in a comparison format so that the carriers with the highest percentage of complaints in this or other areas will be identified. Our bill also sets a 60-day turnaround for providing a dispositive resolution of the complaint, and a carrier's record in meeting the deadline will also be reported. We propose to post these on the web, and to have the carriers themselves make the information available at ticketing counters and any public web site they maintain. Our experience with the monthly "on-time performance" statistics tells us this will be a valuable inducement to improvement. Most important, it does not require the enormous resources that investigating, case-by-case, would take. We would buttress this complaint reporting by also mandating that a complaint form and completion instructions be made readily available at the carrier's ticketing and gate locations for use by airline consumers.

Our bill would address the "delays" problem directly, by requiring the plan submitted by each carrier to specify the procedures it uses to provide information to passengers in these circumstances at five relevant times: (1) prior to 2 hrs before flight; (2) during the last 2 hrs at the gate, with assurance of notice before boarding of expected delays; (3) after enplanement; (4) inflight; and (5) after landing. Passengers will be aware that they are entitled to regular updates with accurate information.

We have adopted an element of Representative Dingell's bill (H.R. 780) that would require each carrier to make a part of its plan the special procedures in place to accommodate passengers who are held in extensive ground holds. This would include, at a minimum, the carrier's plan for providing food, water,

restroom facilities, and access to medical treatment to passengers aboard an aircraft that is on the ground for an extended period without passenger access to the terminal. The carrier's plan shall also include arrangements for providing aircraft with adequate heat and air conditioning during these periods.

Denied boarding and cancellations; ticketing issues: Consumers who make a reservation and pay for a ticket do not expect that the flight will be cancelled without a good reason, or that it will be oversold and they will be involuntarily denied boarding. We think these occurrences, while not entirely avoidable, come up too often. While we think a consumer will benefit in the long-term from the complaint reporting and follow-up we require throughout the bill, we also address the problem directly. We seek a doubling of the "denied boarding compensation," a kind of liquidated damages, that our regulations require airlines to pay when they have oversold a flight and cannot induce volunteers to take alternate flights. We also mandate disclosure of the criteria used for "bumping," and what substitute travel arrangements are offered. Armed with this information, consumers can choose the airlines that provide best for travelers in these situations. We would also raise the involuntary denied boarding compensation limits from \$200/\$400 (depending on length of delay) to \$400/\$800.

Another ticketing issue is the passenger's use of only part of a ticket. While this sounds counter-intuitive, the sophistication of carrier "yield management" techniques leads to situations where it is cheaper to purchase two roundtrip tickets and use half of each, than to purchase a single roundtrip that covers both travel dates. Another case is where the use of only one portion of a long-distance ticket that provides service beyond a carrier's hub is cheaper than simply buying the ticket to the hub that covers the portion of the trip being utilized.

For this reason, we have proposed a reasonable set of requirements for ticket purchasing. The most significant change would be to require, until the 7-day period before flight, that a carrier that quotes a price for a ticket must maintain that price for a 48-hour period, or until the ticket is purchased if sooner. This would allow a consumer a reasonable period to discover whether another, better travel option is available, yet it would not allow the type of "gaming" whereby most of a carrier's seats are tied up in reservations that have been made just so that upgrades or other possibilities will exist at the time of the flight. Carriers are entitled to sell their seats and restrict the right to refunds so that they are not faced with rampant double-booking or other techniques that distort the process of filling the aircraft for each flight.

Another ticketing issue addressed by pending bills is to assure that a purchaser who inquires whether the fare offered is the lowest fare the carrier offers will be advised whether other carrier outlets may offer lower fares. This is not so

burdensome that each agent would have to be aware of every low-cost internet offering, and it would give the consumer notice that a separate search for lower fares may be justified.

Discrimination against the disabled and others: There are significant and unjustifiable gaps in the protections afforded the disabled in airline travel, compared to other aspects of American life. For instance, the Air Carrier Access Act that applies to domestic airline travel, in place of the Americans With Disabilities Act, does not extend to foreign travel. In the case of other groups subject to discrimination, the bar to discrimination of this sort that applies to foreign air carriers does not apply to U.S. carriers. We proposed drafting to close these gaps in our recently transmitted FAA reauthorization bill, and are gratified that both the House and Senate FAA bills contain portions of our proposal. We have included virtually the same proposals in our passenger protection bill, because we believe these provisions deserve expeditious action. We would also require a carrier policy for providing adjacent seats for passengers with disabilities and any attendant who may accompany the passenger to perform functions for the passenger during the flight.

We would like to make explicit one aspect of Senator Snowe's amendment that assumes a private-right-of-action is available under 49 U.S.C. 41712 and the equivalent new provision for foreign air carriers. We have researched the law and believe this is an open question at the least. Therefore, it is desirable to make both the private-right-of-action and the possibility of award of attorney fees a matter of statutory language.

Also, I would stress that the National Council on Disability has pointed out that the complaints of the disabled in airline travel are not reported to DOT as a separate category of complaint but should be. We agree, and our complaint-reporting provision establishes this specific category. We ask that the Committee consider this addition to any consumer bill it reports, as well as the pending S. 82.

Mishandled baggage: We support Senator McCain and Wyden's provision to require that a carrier make its best effort to deliver a passenger's checked baggage within 24 hours after arrival of the flight on which the passenger traveled with checked baggage. We would make this an assurance that the carrier must follow through on or be open to an increased maximum penalty per violation of \$10,000, compared with \$1100 for many other violations of aviation law. Also, the extensive consumer complaint reports we require and would publish, will also highlight trends where one carrier consistently does worse than another.

We also seek an immediate, statutory doubling of the current minimum baggage liability level of \$1250 to \$2500, subject to future inflation increases and the

authority of the Secretary to further increase it if necessary. Our proposal would also force conspicuous, actual notice to a passenger in advance of accepting the baggage before valuables, damage to fragile items, and spoilage of perishable items can be excluded from coverage. Under no circumstances would assistive devices such as wheelchairs be allowed to be classified as baggage and thereby be subject to a cap that applies to baggage.

Child Passengers: One bill introduced in the House (H.R. 700) addresses the two related and important topics of carrier policies for travel of unaccompanied children and for separate security screening of toddlers and infants. Security screening is very important, yet we agree with the House provision that would not force the separate passage of children younger than 2 through a security checkpoint. Also, the carrier's policy for carriage of unaccompanied minors should be clearly specified, as required by our bill.

Codesharing and change-of-gauge improvements: This past Sunday's Washington Post highlighted a common carrier practice of allowing its flights to be listed under another carrier's "code" in the computer reservations systems, as a way of increasing traffic and for many other reasons. Yet travelers are surprised sometimes to find themselves on a different carrier, or a different size aircraft, than they had expected for some or all of a trip. Although we have regulated in this area before, we felt that more needed to be done.

I am pleased to announce that the Department has just completed two important rulemakings in this area. These final rules will ensure that travelers are told at the time of ticket purchase the actual carrier that will provide the transportation, not just the name of a major carrier affiliate, and whether a change in aircraft will be required during a single flight.

I would caution that a provision found in one House bill would flatly bar the use of a single flight number designation in cases where a change of aircraft occurs between segments of the flight. This goes far beyond our new disclosure rule and could have serious and negative unintended consequences. This is an area of great complexity. For instance, as innocuous as the single-flight-number proscription sounds, it would interfere with the legitimate rights of our U.S. carriers to exercise treaty rights to "beyond" markets abroad. It would also bar "funnel flights," where different "flights" designated with their own flights numbers in fact merge at a certain point to consolidate traffic that ends at a single destination. If the area needs to be addressed, it would be preferable to do so via a rulemaking direction from Congress, rather than in inflexible statutory language.

Frequent flyer award disclosure: Currently, consumers can not determine which airline frequent flyer program makes available and awards the most tickets to its members. The Department is reviewing proposing to require each air carrier to



report to the Department the percent of frequent flyer tickets awarded and made available in its top Origin-and-Destination markets will provide consumers with useful information.

Resources to Implement the Proposal: The existing staffing of 16 in our consumer office is now down from over 100 at the Civil Aeronautics Board in 1978 and 40 when the residual CAB functions and staff were moved to DOT in 1985. And since then, the staff has been charged to enforce a number of additional requirements through new laws passed by Congress. This situation must be remedied if we are to effectively pursue airline consumer problems. If legislation is enacted without significant new resources added to our enforcement and consumer office, the legislation will be just words without substance. We believe that, with more resources, we can do a better job at DOT of looking out for the passengers' interests. Therefore, we plan to seek the necessary resources this fiscal year to assure that we can aggressively implement the program I have just outlined--to the extent we can in advance of any new enactment and of course to carry out any new authority. Our request will include necessary personnel and support services to ensure that actions can be taken on an immediate basis.

We would also act to increase civil penalties. Currently, an air carrier is subject to a maximum civil penalty of \$1,100 per violation for violating airline consumer protection statutes and rules. The proposal would raise the civil penalties for violations from \$1,100 per violation to a maximum of \$10,000 per violation. It would also clarify that violations affecting passengers can result in a maximum penalty of \$10,000 per passenger per violation. Failure to comply with an assurance in a carrier plan would constitute a violation of the statute subject to civil penalties.

One other important feature of our bill is to bring new emphasis and centralized accountability at each air carrier for the rights of passengers. We would include in each carrier plan a named individual who is responsible for ensuring that the carrier responds directly and rapidly to airline consumer complaints, and require the publication of that individual's business address, internet electronic (e-mail) address, and telephone number.

Let me end with a final comment. S. 383 and the Administration's initiative identify the same problems, but address them in a somewhat different manner. The Administration's bill is based on disclosure and market forces increasing competition, with certain minimum assurances required by the airline. S. 383 is more of an enforcement-driven measure. In the end, we can work together to ensure that airline passengers receive fair treatment.

Thank you Mr. Chairman. We are grateful to the committee for bringing this focus to a very significant issue. We hope to work with you and the other

sponsors of S. 383 to bring about meaningful improvements for airline consumers. This completes my prepared statement, and I would be pleased to respond to your questions and those of the Committee.